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In The
Supreme Court of the United States
October Term, 1982

CHARLES E. STRICKLAND, SUPERINTENDENT FLORIDA STATE
PRISON; JIM SMITH, ATTORNEY GENERAL OF FLORIDA, AND
LOUIE L. WAINWRIGHT, SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS,

Petitioners,

vs.

DAVID LEROY WASHINGTON,

Respondent.

On Writ of Certiorari To The United States Court of Appeals
For The Former Fifth Circuit (Unit B)

BRIEF AMICI CURIAE OF THE STATES OF ALABAMA, Ar-
IZONA, ARKANSAS, CALIFORNIA, COLORADO, CONNEC-
TICUT, DELAWARE, GEORGIA, HAWAII, IDAHO, ILLINOIS,
INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE,
MARYLAND, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI,
MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW
JERSEY, NEW MEXICO, NORTH CAROLINA, OHIO, OKLA-
HOMA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA,
SOUTH DAKOTA, TEXAS, UTAH, VERMONT, VIRGINIA, WASH-
INGTON, WEST VIRGINIA, AND WYOMING, IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

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The States noted above, by and through their respec-
tive Attorneys General (see Appendix), appear on behalf
of their citizens and file this brief pursuant to Rule 36 of
the Rules of this Court.

INTEREST OF AMICI CURIAE

As the chief legal officers of their respective states,
these Attorneys General are often called upon to represent

the correctional administrators of their states in federal courts in habeas corpus actions initiated pursuant to 28 U. S. C. § 2254. Moreover, Attorneys General have a vital interest in the integrity of the criminal justice process of their states. With ever-increasing frequency they are required to defend state criminal convictions against Sixth and Fourteenth Amendment allegations of ineffective assistance of counsel. For these reasons, the amici have a substantial and continuing interest in the establishment of consistent standards for application in cases involving claims of ineffective assistance of counsel.

SUMMARY OF ARGUMENT

The issue of ineffective assistance of counsel can potentially be raised in every criminal case in which a conviction is obtained. Absent a controlling decision from this Court, the standards by which such claims are presently reviewed in state and federal courts vary from state to state and from circuit to circuit. No other issue so pervasively threatens our courts' ability to enforce criminal sanctions on such a fundamental level. There is a vital and immediate need for this Court to resolve the conflicts that presently exist among the states and the federal circuits and establish guidelines by which courts can begin to analyze these claims with a measure of consistency.

ARGUMENT

This Court should resolve the direct conflict between an *en banc* decision of the Eleventh Circuit Court of Appeals, on the one hand, and the decisions of the D. C. Circuit Court of Appeals, sitting *en banc*, and the Florida Supreme Court, on the other. The Eleventh Circuit, in *Washington v. Strickland*, 693 F.2d 1243, 1261 (5th Cir. 1982) (Unit B) (Former Fifth) (*en banc*) expressly rejected the reasoning of the D. C. Circuit in *United States v. DeCoster*, 624 F.2d 196 (D. C. Cir. 1979) (*en banc*) and "[struck] down the Florida Supreme Court's standard for reviewing ineffective assistance of counsel claims set forth in *Knight v. State*, 394 So.2d 997 (Fla. 1981)." 693 F.2d at 1287. The issue raised by this conflict is related to, but goes further than that recently addressed by Justice White in *Romero v. United States*, 103 S.Ct. 236, 237 (1982) (*cert. denied*) (White, J., dissenting). He said of the effectiveness of counsel that "[a] more fundamental question to the administration of criminal justice in the state and federal courts can scarcely be envisioned." *See also, Maryland v. Marzullo*, 435 U.S. 1011 (1978) (White, J., joined by Rehnquist, J., dissenting from the denial of *certiorari*).

While all Circuit Courts of Appeal, with the sole exception of the Second Circuit, have adopted a "reasonable competence" standard of effectiveness, or some variation thereof, the analysis by which the standard is to be applied varies dramatically. Other circuits have adopted and applied similar analysis to that established in *DeCoster*, *supra*. *See, Cooper v. Fitzharris*, 586 F.2d 1325 (9th Cir. 1978) (*en banc cert. denied*, 440 U.S. 974 (1979);

White Hawk v. Solem, 693 F.2d 825, 827 (8th Cir. 1982); *Wade v. Franzen*, 678 F.2d 56 (7th Cir. 1982). Compare, *United States v. Porterfield*, 624 F.2d 122 (10th Cir. 1980); *United States v. Payne*, 641 F.2d 866 (10th Cir. 1981). The D. C. Circuit continues to apply the *DeCoster* analysis. See, *United States v. Green*, 680 F.2d 183, 184 (D. C. Cir. 1982). A number of state courts have cited *DeCoster* with approval and adopted modes of analysis similar to that employed by the D. C. Circuit. See, e. g., *True v. State*, Decision No. 3169, slip op. at 9 (Me. March 9, 1983); *Davis v. State, Ind. App.*, 418 N. E. 2d 256, 267, n. 7 (1981); *State v. Hyman*, S. C., 281 S. E. 2d 209, 213 (1981); *Lang v. Murch*, Me., 438 A. 2d 914, 916 (1981). Other state courts have applied varied standards to these claims, standards threatened by the emerging significance of the issue and the increasing frequency with which Circuit Courts are called upon to review it. For example, in *People v. Fosselman*, Crim. 22474, slip op. at 15 (Cal. March 17, 1983), the California Supreme Court recently held that "a defendant may prove . . . ineffectiveness if he establishes that his counsel failed to perform with reasonable competence and that it is *reasonably probable a determination more favorable to the defendant would have resulted in the absence of counsel's failings.*" (Emphasis added.) See also, *State v. LePage*, Idaho, 630 P.2d 674, 680 (1981); *Commonwealth v. Borelli*, Pa. Super., 431 A.2d 1067 (1981).

This Court's central responsibility as the court of last resort requires that it eventually resolve these fundamental conflicts. The integrity of our criminal justice process hangs in the balance. Each day that passes under the conflicting rules and varied burdens of proof currently being applied results in more criminal convictions in

which the claim will eventually be raised and decided amidst a confusing amalgam of case law. The problem is pervasive and the issue complex. As a result, the need to establish a consistent standard of review is immediate.

CONCLUSION

For the foregoing reasons we urge this Court to grant certiorari and review the opinion and judgment of the court below.

Respectfully submitted this 20th day of April, 1983.

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